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UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

INDEX NEWSPAPERS, LLC, *et al.*,

Plaintiffs.

v.

CITY OF PORTLAND, *et al.*,

Defendants.

Case No. 3:20-cv-1035-SI

**FEDERAL DEFENDANTS'  
RESPONSE TO NOTICE OF  
SUPPLEMENTAL AUTHORITY**

Defendants the Department of Homeland Security (“DHS”) and the United States Marshals Service (“USMS”) respectfully submit this response to Plaintiffs’ notice of supplemental authority. See ECF No. 269. Plaintiffs’ notice refers the Court to the recent Supreme Court decision in *West Virginia v. EPA*, No. 20-1530 (U.S. June 30, 2022). Plaintiffs suggest that *West Virginia* addressed situations in which “the case was mooted by changed circumstances.” ECF No. 269, at 1.

However, the Court stated that “[t]he only conceivable basis for a finding of mootness in th[e] case is [the respondent’s] voluntary conduct.” *West Virginia*, Slip Op. at 15 (alterations in original) (quoting *Friends of the Earth, Inc. v. Laidlaw Envt'l Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000)). The Court therefore did not address situations in which “the changed circumstances . . . are not simply a voluntary cessation of conduct by Defendants in response to the same circumstances, [but rather] changed circumstances outside the control of Defendants, including significantly fewer and more sporadic protests with fewer participants.” *See Wolfe v. City of Portland*, 566 F. Supp. 3d 1069, 1082 (D. Or. 2021) (citing *Wise v. City of Portland*, 539 F. Supp. 3d 1132, 1147–48 (D. Or. 2021)).

Dated: July 6, 2022

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